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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,719	08/11/2001	Clarence E. Blanchard	JT-3166-US	6359
27062	7590	11/21/2003		
ZIOLKOWSKI PATENT SOLUTIONS GROUP, LLC (BMCA) 14135 NORTH CEDARBURG ROAD MEQUON, WI 53097				
			EXAMINER WRIGHT, ANDREW D	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/927,719

Applicant(s)

BLANCHARD, CLARENCE E.

Examiner

Andrew Wright

Art Unit

3617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments regarding claim 29 are not persuasive. The Davies (US 2,676,559) housing is indirectly mounted to the hull in a pivotal fashion. Therefore it meets the broad meaning of the claimed limitation. Furthermore, applicant's own invention has an intermediate member (128) between the housing and the hull. As such applicant's invention comprises a housing that is pivotally mounted to a bracket (128) with the bracket being mounted to the hull. In other words, applicant's housing is not directly mounted to the hull. In the same way that applicant can construe this to support the claim limitation, so can Davies be construed to meet the claim limitation.


Applicant argues that the thrust bracket of Davies is not a flat plate or against the stern. This argument is not persuasive and has already been addressed in the pending rejection.

Applicant argues that member (5) of Davies does not "receive, or support the weight or pressure of" the exhaust housing therein. This argument is not persuasive. While applicant argues that "receive" is defined as supporting the weight of, it is asserted that receive can also be defined as to act as a receptacle. The horns (136) receive the housing in that they act as a receptacle for the housing.

Applicant argues that the Davies horns (136) do not prevent lateral rotation of the exhaust housing. Applicant asserts that the steering rotation of the housing is lateral rotation, and the horns do not prevent the steering of the watercraft. This argument is not persuasive. The frame of reference of "lateral" is not defined in the claims, and as such that term should be given its plain and ordinary meaning. Lateral rotation can be construed to be rotation about an axis that extends along the longitudinal centerline of the hull, wherein the housing would be rotating such that it is extending in the lateral direction. The Davies bracket prevents such rotation.

The argument regarding claim 43 is persuasive and overcomes the rejection. Upon reconsideration, the horns (136) are not considered to comprise the screws (137).

*h* 11/19/03

  
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